

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Express Car Wash,
Petitioner-Appellant,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-91-0193
Parcel No. 48-860-00-1116

On January 9, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Express Car Wash, was represented by attorney John D. Hintze of Ahlers & Cooney, PC, Des Moines. The Warren County Board of Review was represented by County Attorney John Criswell, and Assessor Brian Arnold participated at hearing on its behalf. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Express Car Wash, Inc. (Express), owner of property located at 800 N Jefferson Way, Indianola, Iowa, appeals from the Warren County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2011, assessment and valued at \$631,700: representing \$397,000 in land value and \$234,700 in improvement value. Express protested to the Board of Review on the grounds that the property was not equitably assessed compared to other like property under Iowa Code section 441.47(1)(a); that the property was assessed for more than authorized by law under section 441.37(1)(b); and that there is an error in the assessment under section 441.27(1)(d). It attached a letter to its Board of Review petition explaining its claims and giving a history of the property and its current environmental status.

The Board of Review denied the protest.

Express then appealed to this Board on the same grounds. On its appeal form, Express valued the property at \$459,300. As of the hearing, however, Express now values the subject property at \$430,000 based on an appraisal it obtained..

The subject property is a seven-bay car wash built in 1994. It has 5200 square feet on the ground floor. The car wash has four automatic bays and three manual bays. It sits on a 1.302 acre site. The site was a former fuel station auto service and repair shop. During its use by others, it had five underground storage tanks (UST) that were removed in 1991. Jeshani purchased the property from the Small Business Administration in 1994, and was told at that time the site had a low risk of environmental contamination. However, after his purchase and around that time it was determined the tanks had leakage and were subsequently determined to be leaking underground storage tanks (LUST). The property is currently listed as a "high risk" LUST site by the Iowa Department of Natural Resources (DNR).

Amir Jeshani, owner of Express, testified at hearing. Jeshani testified Express' assessment was \$459,300 in 2010, and increased in 2011 to \$631,700. He indicated the increase was a result of major change in the land value from \$142,800 in 2010 to \$397,000 in 2011. Jeshani submitted three years of financial records because, in his opinion, the value of the car wash is largely based on the revenue it can produce. His net income has decreased \$60,726 between 2008 and 2010. Jeshani noted that expenses have increased, and in today's economy, washing your car is a discretionary expense.

Jeshani pointed out that a competing 10-bay car wash located three blocks away at 506 N Jefferson, sold in September 2004 for \$650,000 (including non-taxable equipment). Additionally, he noted the property's current assessed value is \$536,500. Its land assessment is \$221,100, while the subject land is assessed at \$397,000. Jeshani believes if the subject property were sold it would bring less, since the Jefferson car wash generates more revenue.

Jeshani also pointed out that the subject property's land is assessed at \$7.00 per square foot, and retail properties such as Dairy Queen, Hy-Vee, and Country Kitchen, located within five blocks of the subject property, are assessed for less at \$5.00, \$3.62, and \$3.40 per square foot respectively. He believes this strip area land value should be valued equally or higher than the subject. This Board notes the lot sizes or other comparable data regarding these properties was not submitted; therefore, it must be given little weight because direct comparisons between the subject property and the other properties cannot be analyzed. Express' petition to the Board of Review also listed several assessments of car wash property located in Des Moines. It attempts to reference these properties to support the conclusion that they are competing properties that all received reductions in their assessments. This Board, however, notes those properties are not located in Warren County; and therefore, their assessments cannot be used in an equity claim. *Maytag Co. v. Partridge*, Iowa 210 N.W.2d 584, 594-595 (Iowa 1973).

A major concern in Jeshani's protest is the large increase in the land value. He testified the subject site is being considered a "high risk" leaking underground storage tank site. This contamination was caused by the five underground tanks utilized by a prior owner. Jeshani testified potential owners would have difficulty getting funding from lenders and would have additional administrative and/or regulatory obligations. In his opinion, the DNR's continued requests would decrease the value of the subject property.

Assessor Brian Arnold, on behalf of the Board of Review, cross-examined Jeshani. He questioned Jeshani regarding a refinanced mortgage Arnold believed Jeshani tried to obtain on the Express property. However, it is clear from Jeshani's testimony that the refinancing includes other car washes he owns, not just the Express property.¹ Therefore, we give no weight to the mortgage or refinancing information in the record.

¹ Jeshani owns three additional car washes located in Des Moines and West Des Moines.

Ted Frandson of Frandson and Associates, Des Moines, Iowa, appraised the subject property as of January 1, 2011. He also testified at hearing for Express. In summary, Frandson initially valued the subject property at \$800,000. This value, however, includes the value of machinery and equipment and considers the property with no environmental contamination. Frandson also concluded a market value for the subject property after deducting the value of the machinery and equipment (\$245,577) and accounting for the existing environmental contamination on the property. To reflect the environmental contamination, he made a 15% adjustment. His final conclusion of value for the subject property is \$430,000, as of January 1, 2011.

Frandson conducted all three approaches to value. He valued the property as if uncontaminated and then later adjusted his reconciled value to reflect the contamination.

Frandson first valued the subject property using the cost approach. To determine a land value, Frandson chose four land sales that occurred in Indianola in the general vicinity of the subject property. The majority of these sales are dated; three occurred between June 2004 and June 2006. The fourth sale took place in September 2009. However, Frandson testified he made significant adjustments for time. Frandson also stated that only other nominal adjustments to the sales were necessary. He concluded a value of \$7.00 per square foot for the site and a total site value of \$397,000.

Frandson then determined the replacement cost for Express' improvements using *Marshall and Swift Valuation Service*. He determined the total estimated accrued depreciation for the building was 72% and depreciated the other site improvements at 80%. Including the equipment value, he arrived at a total depreciated cost of improvements of \$438,027. Adding this value to the land value, Frandson concluded a cost approach value of \$835,000 (rounded).

Frandson's sales comparison approach examined four sales of car washes in Iowa. Two sales were in Indianola, one sale was from Polk City, and the final sale was in Oskaloosa. Three of the sales

were recent, occurring between June 2009 and February 2010. The fourth sale was more dated and occurred in September 2004. Frandson noted he considered the sales on a price-per-bay basis and used this price-per-bay basis to establish the subject's improvement value. He testified this method was reasonable for a car wash property rather than a price per square foot. Frandson's adjusted range of value per bay was between \$99,450 and \$130,000. Using a per-bay value of \$115,000, he concluded a sales comparison approach value of \$805,000.

Finally, Frandson completed an income approach to value. He used market rates from two other car washes in Indianola. The appraisal notes the two comparables' automatic wash facilities are inferior to the subject in terms of quality and wash features. However, he finds the subject's wash pricing is in line with competing washes even though it offers additional features and has higher quality automatic equipment. Frandson also examined annual washes and revenue per wash. He considered both fixed and variable expenses. He concluded a net operating income (NOI) of \$108,498, capitalized it at 13.71%, and arrived at an income approach value of \$791,000 (rounded).

Frandson reconciled the approaches and arrived at a value of \$800,000. As previously noted, this value included exempt machinery and equipment and did not account for the environmental contamination. Frandson testified the 15% he applied for the environmental contamination was a difficult figure to determine because a "precise discount the typical buyer would require to accept the risk of potential future remediation the DNR may initiate" is difficult to estimate. He explained that some contaminated properties have less than zero value because of the liability and cleanup. Frandson testified the DNR has not lifted the risk designation and he considered the contamination was a significant risk to the property. Frandson found no sales of contaminated car washes. He also felt this was a minimum discount since there were so many unknowns.

Frandsen's testimony regarding his appraisal, including his explanation of the discount for the environmental issue was honest and concise. This Board finds he was a knowledgeable credible witness.

Arnold testified on behalf of the Board of Review. Arnold submitted a restructured income statement he created of the subject property. Based on his restructured income statement, his income approach generated a value of \$631,700, excluding exempt property. Arnold used his income approach to support the assessed value. Arnold also provided a land sales spreadsheet with sales from 2004 through 2011, as well as a current land rate map. The sales also show a price per unit value, but the information was not used to determine a market value for the subject property. We find this information is too generalized and not adjusted to reflect the subject property's assessed value. Arnold stated that he revalued all commercial property in 2011. Ultimately, we give the Board of Review's evidence little weight.

Finally, a major concern to this Board, as well as Express' counsel, is the fact that the Board of Review met after Express' initial hearing and allowed Arnold to present information to it, namely his restructured income approach to support the assessed value. The restructured income statement presented after the original hearing produced the same value as the assessed value. The Board of Review did not notify Express regarding the Arnold presentation or that this additional evidence was given to the Board of Review. Nor was Express given the opportunity to take part in the deliberation meeting or rebut the restructured income approach. After Arnold's presentation, the appeal was denied.

This Board questions the procedure utilized by the Warren County Board of Review, and the assessor's actions regarding this assessment. We find the best evidence to be the appraisal by Frandsen, after the deduction of equipment. We, therefore, modify the assessment and determine the value for January 1, 2011, to be \$430,000.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove equity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market

value. § 441.21(1). Express did provide evidence to show the property's assessment, particularly its land value, was quite different from the land value of another car wash located nearby. As a whole, however, Express' evidence is not sufficient to prove inequity in the assessments.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Express provided an appraisal that we find demonstrates the subject property is over assessed.

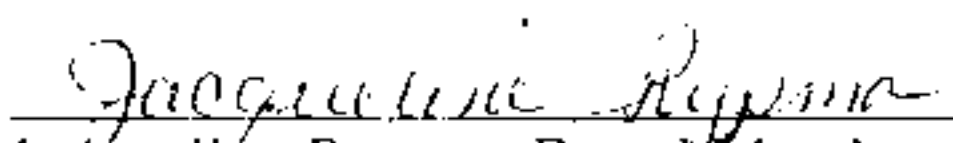
Viewing the evidence as a whole, we determine that substantial evidence exists to support Express' claim of over-assessment as of January 1, 2011. We, therefore, modify the Express property assessment as determined by the Board of Review.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Express property located at 800 N Jefferson Way in Indianola, Iowa, determined by the Warren County Board of Review is modified and assessed at \$430,000.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Warren County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcel shall be corrected accordingly.

Dated this 3 day of April 2012.


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>4-3</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>[Handwritten Signature]</i></u>